

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE: SANTA FE NATURAL TOBACCO
COMPANY MARKETING & SALES PRACTICES
AND PRODUCTS LIABILITY LITIGATION

LEAD CASE NO. MD 16-2695
JB/LF

This Document Relates to All Cases

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

In *Benson et al. v. Newell Brands, Inc. and Nuk USA, LLC*, No. 19 C 6836, 2021 WL 532510 (N.D. Ill. Nov. 16, 2021) (Guzman, R.) ("*Benson*"), the court certified a multi-state class of purchasers of a consumer product sold by third-party retailers where Dr. Jean Pierre Dubé proffered the precise damages methodology offered in support of class certification here.

In this case, Dr. Dubé concluded that the determination of class-wide economic damages can be calculated using a Conjoint Analysis. ECF No. 280-008. Using the preference estimates from the Conjoint Analysis, Dr. Dube opines he can implement a marketplace simulation to measure the price premium. *Id.* ¶19. Further, the preference estimates from the Conjoint Analysis can likewise be used to measure willingness-to-pay, the microeconomic measure of total incremental class-wide economic value from the benefits associated with the Challenged Claims on the labels of the Challenged Products. *Id.* ¶20. The *Benson* court found this exact damages methodologies feasible and capable of calculating class-wide damages. *Benson*, 2021 WL 532510, at *5.

Like in *Benson*, here, Dr. Dubé "begins with the assumption that defendants' claims about their [products] are false, and states that under that assumption, the economic damages to consumers who purchased the products consist of . . . a Price Premium and Willingness-to-pay ('WTP')." *Id.* at *4, compare ECF No. 280-008 at ¶ 21 (e.g. the proffer of a class-wide damages

methodology starts with “the assumption that the Challenged Claims are false, misleading and/or deceptive.”).

The *Benson* court acknowledged that “price-premium damages calculations based on conjoint analysis designed to isolate the portion of the payment attributable to a misrepresented product feature have been accepted by several courts.” *Benson*, 2021 WL 532510, at *5. The court confirmed that Dr. Dube does not have to actually perform his Conjoint Analysis at the class certification stage. The methodology presented in *Benson*, which is what is proposed in this case, satisfies the class certification standard as it “show[s] that there is a method of estimating damages that applies class-wide and that method measures damages attributable to plaintiffs’ theory of liability.” *Id.*

Judge Guzman’s consideration of Dr. Dube’s “detail[ed]” conjoint analysis, which was “tied to plaintiffs’ theory of liability,” along with expert criticisms in opposition resulted in a thorough and well-reasoned decision granting class certification.

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